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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
12 RIVERSIDE DIVISION
13

14 **L.C.,**

15 Plaintiffs,

16 **v.**

17 **STATE OF CALIFORNIA, et al.,**

18 Defendants.
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No. 5:22-cv-00949 KK-SHKx

**DEFENDANTS' NOTICE OF
MOTION AND MOTION IN LIMINE
NO. 3 TO EXCLUDE EVIDENCE
AND TESTIMONY CONCERNING
SHOOTING AND INJURIES OF
THIRD PARTIES DURING THE
SUBJECT INCIDENT;
MEMORANDUM OF POINTS AND
AUTHORITIES; SUPPORTING
DECLARATION**

Date: May 15, 2025
Time: 9:30 a.m.
Courtroom: 3 (3rd Floor)
Judge: Honorable Kenly Kiya Kato
Trial Date: June 2, 2025
Action Filed: June 7, 2022

25 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

26 PLEASE TAKE NOTICE that on May 15, 2025, at 9:30 a.m., or as soon
27 thereafter as the matter may be heard in Courtroom 3 of the above-entitled court,
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1 before the Honorable Kenly Kiya Kato, Defendants will move the Court, pursuant
2 to Federal Rules of Evidence 401 to 403, for an order to exclude any reference,
3 evidence, testimony, or mention of injuries sustained by the Botten family and any
4 other third party during the shooting incident involving decedent Hector Puga on
5 the grounds that such evidence is irrelevant, inflammatory, substantially more
6 prejudicial than probative, and likely to mislead or confuse the jury.

7 The motion is based on this Notice, the attached Memorandum of Points and
8 Authorities, the attached Declaration of Diana Esquivel, the pleadings, records, and
9 files in this action, and such other matters as may properly come before the Court.

10 **Informal resolution efforts.** As required under the Court's Standing Order in
11 Civil Actions and Local Rule 7-16, the parties met and conferred prior to the filing
12 of this motion. (Esquivel Decl. ¶ 2.)

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14 Dated: April 17, 2025

Respectfully submitted,

15 ROB BONTA
16 Attorney General of California
17 NORMAN D. MORRISON
Supervising Deputy Attorney General

18 */s/ Diana Esquivel*

19 DIANA ESQUIVEL
20 Deputy Attorney General
21 *Attorneys for Defendants State of*
22 *Cal., by and through the Cal.*
Highway Patrol, Blackwood, Kee,
and Rubalcava

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MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Decedent Hector Puga, wanted for shooting a gun at a complete stranger during a road-rage incident on the freeway, led law enforcement in an hour-long pursuit through residential neighborhoods at speeds ranging from 50 to 90 mph. Puga then orchestrated an hour-long standoff at a residential intersection, where law enforcement exhausted less lethal force and employed various negotiation tactics to no avail. Puga eventually exited his vehicle and then pulled a gun from his waistband and fired at the officers. Law enforcement returned fire. Puga died at the scene. During the shooting, three members of the Botten family, who lived in the northeast corner house of the intersection, were accidentally struck by errant bullets.

The central issue in this case is whether the Defendant officers were justified in using deadly force when Puga reached for the gun in his waistband, fired the at the officers, and attempted to flee while still armed with a gun. Plaintiffs seek to introduce evidence and mention at trial that three members of the Botten family were shot by bullets from the officers' guns. They intend to call Jonathan Botten, Sr. as a witness (Esquivel Decl. ¶ 3), and their police-practices expert, Roger Clark, intends to officer opinions that Defendants' pre-shooting tactics were negligent because the Bottens were shot, among other reasons. (Clark Report Opinions Nos. 8-10, attached as Ex. A at pp. 13-14.) Any testimony or mention of the Bottens' injuries is irrelevant, unduly prejudicial, and any probative value such testimony may have is substantially outweighed by its prejudicial and inflammatory effect and likelihood to confuse the jury and waste time. Accordingly, Defendants request that such evidence be excluded.

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1 **ARGUMENT**

2 Federal Rule of Evidence 402 provides that all relevant evidence is admissible
3 and evidence that is not relevant is inadmissible. Fed. R. Evid. 402. Relevant
4 evidence is “evidence having any tendency to make the existence of any fact that is
5 of consequence to the determination of the action more probable or less probable
6 than it would be without the evidence.” Fed. R. Evid. 401(a). Relevant evidence
7 may be excluded if it may result in: “unfair prejudice, confusing the issues,
8 misleading the jury, undue delay, wasting time, or needlessly presenting cumulative
9 evidence.” Fed. R. Evid. 403; *Obrey v. Johnson*, 440 F.3d 691, 698 (9th Cir. 2005).

10 A district court is accorded a wide discretion in determining the
11 admissibility of evidence under the Federal Rules. Assessing the
12 probative value of [the proffered evidence], and weighing any factors
13 counseling against admissibility is a matter first for the district court’s
sound judgment under Rules 401 and 403

14 *Sprint/United Mgmt. Co. v. Mendelsohn*, 552 U.S. 379, 384 (2008). In doing so, the
15 court must look to the “relation between an item of evidence and a matter properly
16 provable in the case.” Fed. R. Evid. Rule 401, Adv. Comm. Note. Indeed, the court
17 should ask the appropriate question: “Does th[is] item of evidence tend to prove the
18 matter sought to be proved?” *Id.*

19 **I. EVIDENCE OF THE BOTTENS’ INJURIES ARE IRRELEVANT TO THE ISSUES**
20 **THE JURY MUST DECIDE**

21 The central liability issue in this case is whether the Defendants used
22 excessive force during their encounter with Puga. Whether the Bottens or any third
23 party was injured during Defendants’ encounter with Puga has no relevance to the
24 issues of liability or damages.

25 In *Graham v. Connor*, 490 U.S. 386 (1989), the Supreme Court set forth
26 factors to be considered in evaluating whether the force used was reasonable,
27 “including the severity of the crime at issue, whether the suspect poses an
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1 immediate threat to the safety of the officers or others, and whether he is actively
2 resisting arrest or attempting to evade arrest by flight.” *Id.* at 396 (citing *Tennessee*
3 *v. Garner*, 471 U.S. 1, 8-9 (1985)). Other relevant considerations include: the
4 relationship between the need for the use of force and the amount of force used; the
5 extent of the plaintiff’s injury; any effort made by the officer to temper or to limit
6 the amount of force; the severity of the security problem at issue; and the threat
7 reasonably perceived by the officer. *O’Neil v. Cty. & Cty. of S.F.*, No. 17-CV-
8 07190-JCS, 2021 WL 2914975, at *8 (N.D. Cal. July 12, 2021) (citing *Lombardo v.*
9 *Cty. of St. Louis*, 594 U.S. 464, 467 (2021)). The court may additionally consider
10 whether officers administered a warning, assuming one was practicable. *George v.*
11 *Morris*, 736 F.3d 829, 837-38 (9th Cir. 2013) (citing *Scott v. Harris*, 550 U.S. 372,
12 381-82 (2007)). Injury to an innocent bystander is not a factor when evaluating the
13 reasonableness of the force used. Similarly, state-law claims for battery and
14 negligent use of deadly force by a peace officer do not take into consideration
15 whether a third party was injured during the officer’s use of force to determine the
16 appropriateness of the use of force. (See CACI Nos. 441 (11/2020) and 1305B
17 (5/2021).)

18 Evidence that the Bottens were shot or injured has no tendency to prove that
19 the Defendants’ use of deadly force **against Puga** was unreasonable or
20 unnecessary. Accordingly, evidence of their shooting and injuries should be
21 excluded as irrelevant.

22 **II. EVIDENCE OF THE BOTTENS’ SHOOTING OR INJURIES IS** 23 **SUBSTANTIALLY MORE PREJUDICIAL THAN PROBATIVE**

24 Federal Rule of Evidence 403 requires exclusion of testimony and evidence
25 concerning the Bottens’ shooting and injuries. In *Liew v. Official Receiver and*
26 *Liquidator*, 685 F.2d 1192, 1195 (9th Cir. 1982), the Ninth Circuit held that trial
27 courts have “very broad discretion in applying Rule 403 and absent abuse, the
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1 exercise of its discretion will not be disturbed on appeal.” The Advisory Committee
2 note to Rule 403 provides:

3 Unfair prejudice is that which could lead the jury to make an emotional
4 or irrational decision, or to use the evidence in a manner not permitted by
5 the rules of evidence ... “unfair prejudice as used in Rule 403 is not to be
6 equated with testimony simply adverse to the opposing party. Virtually
7 all evidence is prejudicial or it isn’t material . . . Unfair prejudice within
8 the context of Rule 403 means an *undue tendency to suggest a decision*
on an improper basis, commonly, though not necessarily, an emotional
one.”

9 Fed. R. Evid. 403, Adv. Comm. Note, citing *Ballou v. Henri Studios*, 656 F.2d 1147
10 (5th Cir. 1981) (emphasis added). Under certain circumstances, the admission of
11 evidence that is so inflammatory and irrelevant can constitute reversible error. *See*
12 *Brandom v. United States*, 431 F.2d 1391, 1398 (7th Cir. 1970).

13 Evidence that innocent bystanders were shot during the incident with Puga is
14 likely to anger the jury or inflame the passions of the jury against the Defendants.
15 The jury may find the Defendants liable, not because of their use of force against
16 Puga, but to punish the officers for shooting innocent bystanders, especially a
17 young teenager like Jonathan Botten, Jr., who was 12 years old at the time and
18 sustained three gunshot wounds to the chest. Such evidence may also confuse the
19 issues. Plaintiffs seek to use this evidence to show that the officers were negligent
20 in their pre-shooting tactics, contending that Defendants’ negligence is proven by
21 the fact that the Bottens were shot. But this is not the correct legal standard for
22 Plaintiffs’ negligence claim. Plaintiffs must show that the officers’ pre-shooting
23 tactics **as they pertained to Puga** were unreasonable. (CACI No. 441.)

24 Lastly, evidence of the Bottens’ shooting and injuries will waste time because
25 Defendants will then be required to present evidence that the officers considered
26 their background and evacuation of nearby residents; evidence of the Bottens’ own
27 negligence will also be presented. Although such evidence has no bearing on the
28 reasonableness of the force used against Puga, Defendants will be forced to present

1 such evidence to address Plaintiffs' contention that Defendants were negligent
2 because the Bottens were shot.

3 Whatever minimal probative value evidence of the Bottens' shooting and
4 injuries has, it is substantially outweighed by the dangers of tainting the jury's
5 perceptions of the Defendants, inflaming their passions, confusing the jury of the
6 legal standard for negligence against a peace officer, and wasting time with the
7 presentation of additional evidence and testimony. The Court should therefore
8 exclude such evidence under Rule 403.

9 **CONCLUSION**

10 The Court should exclude evidence that the Bottens were shot and injured
11 because such evidence is irrelevant and its probative value is substantially
12 outweighed by its prejudicial effect. Accordingly, the Court should grant this
13 motion and preclude Plaintiffs' witnesses, experts, and counsel from offering
14 evidence, eliciting testimony, or making any mention in the presence of the jury
15 that members of the Botten family were shot or injured during Defendants'
16 encounter with Puga.

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18 Dated: April 17, 2025

Respectfully submitted,
ROB BONTA
Attorney General of California
NORMAN D. MORRISON
Supervising Deputy Attorney General

22 */s/ Diana Esquivel*

23 DIANA ESQUIVEL
24 Deputy Attorney General
25 *Attorneys for Defendants State,*
Blackwood, Kee, and Rubalcava

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Defendants State of California, Blackwood, Kee, and Rubalcava, certifies that this brief contains 2,233 words, which complies with the word limit of L.R. 11-6.1.

Dated: April 17, 2025

/s/ *Diana Esquivel*
Diana Esquivel

DECLARATION OF DIANA ESQUIVEL

I, Diana Esquivel, declare:

1. I am admitted to practice law in California and before this Court, and am a Deputy Attorney General with the Office of the Attorney General for the State of California, attorneys of record for Defendants State of California, by and through the California Highway Patrol, Michael Blackwood, Isaiah Kee, and Bernardo Rubalcava (State Defendants).

2. As required in the Court's Standing Order and Local Rule 7-16, the parties meet and conferred on the issues presented in this motion as well as the other issues the parties identified as matters that would be subject to motions in limine. On April 7, 2025, the parties exchanged e-mails, listing the motions in limine they intended to file. The parties discussed the factual and legal basis for their respective motion by video conference on April 11. Over the course of the following days, the parties exchanged additional e-mails concerning their position on certain issues. The parties were unable to agree on the issues raised in this motion in limine.

3. During the parties' informal resolution efforts, Plaintiffs' counsel asserted that the shooting of the Botten family was relevant to their negligence claim based on the officers' pre-shooting tactics. The parties subsequently exchange their proposed trial witness lists. Plaintiffs listed Jonathan Botten, Sr. as a witness, and the State Defendants may call Annabelle Botten as a witness to provide testimony limited to her seeing Puga point a gun at the officers when they shot at him, as she previously stated in her call to 911 and her interview with investigating officers.

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1 4. Exhibit A is a true copy of the relevant portions of Mr. Clark's report,
2 produced with Plaintiffs' expert disclosures in this matter.

3 I declare under penalty of perjury under the laws of the United States and the
4 State of California that the foregoing statements are true and correct.

5
6 Dated: April 17, 2025

/s/ *Diana Esquivel*
Diana Esquivel